

Memorandum of Decision: 04-20210013
Gross Retail Tax
For the Tax Year 2020

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Indiana service provider was able to show that it was entitled to a refund of sales tax paid on purchases of items it rents to its customers as a part of the service offered.

ISSUE

I. Sales Tax - Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-4-10; IC § 6-2.5-1-21; IC § 6-2.5-5 *et. seq.*; IC § 6-2.5-5-8; IC § 6-2.5-8-8; [45 IAC 2.2-2-1](#); [45 IAC 2.2-4-27](#).

Taxpayer seeks a refund of sales tax paid on purchases of items it uses in its home staging business.

STATEMENT OF FACT

Taxpayer is an Indiana business which offers home staging, design, and decorating services. As a part of its home staging business, Taxpayer purchases various items which it uses to stage houses. Taxpayer pays Indiana sales tax at the time of these purchases. In November of 2020, Taxpayer filed a Claim for Refund ("GA-110L") for the sales tax paid. The Indiana Department of Revenue ("Department") denied Taxpayer's claim and Taxpayer filed a timely protest. An administrative hearing was held and this Memorandum of Decision results. Additional facts will be supplied as necessary.

I. Sales Tax - Exemption.

DISCUSSION

As stated above, Taxpayer is a home staging, design, and decorating business. As a part of its home staging business, Taxpayer purchases various decorative items and pays Indiana sales tax at the time of purchase. Taxpayer filed a GA-110L requesting a refund of sales tax stating that "As a retail merchant we are paying Indiana sales tax on the rental of this merchandise and as such should not have also paid sales tax on the purchase of these goods." The Department asked Taxpayer to "send proof of exemption certificate in order to process the refund claim form GA-110L." Ultimately the Department denied Taxpayer as it "failed to provide the requested information to support the validity of the refund claim."

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). Additionally, "[a] person . . . is a retail merchant making a retail transaction when the person rents or leases tangible personal property to another person other than for subrent or sublease." IC § 6-2.5-4-10(a).

Regarding the initial purchases of staging items, Taxpayer's purchases fall squarely within the definition of a retail transaction. In those transactions, Taxpayer is acting as a "retail purchaser" and is liable for the sales tax on the transaction unless the transaction is subject to an exemption. IC § 6-2.5-2-1(b); IC § 6-2.5-5 *et. seq.* IC § 6-2.5-5-8 provides that "transactions involving tangible personal property . . . are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property." As stated above, Taxpayer purchases staging items and rents them to its customers as a part of its home staging services. As such, these transactions are exempt from sales tax.

If a taxpayer is a registered retail merchant with the Department and makes a purchase in a transaction which is exempt from the state gross retail and use taxes, the person "may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8 (a). The seller then would have no duty to collect or remit the sales tax on that purchase. *Id.* Taxpayer provided the Department with a copy of its exemption certificate, however, the entity listed as the purchaser on the certificate had a different name from the Taxpayer. This is likely why the Department determined that Taxpayer "failed to provide the requested information to support the validity of the refund claim." At the Hearing it was determined that the name listed on Taxpayer's exemption certificate was its "doing business as" name as registered with the Indiana Secretary of State. Therefore, the initial purchases of the staging items were exempt from the sales tax.

Our analysis does not stop there. Though the Department agrees that the initial purchases were exempt from the sales tax, we must examine the rental of these items. The rental of tangible personal property to another person is a retail transaction subject to tax under IC § 6-2.5-4-10. IC § 6-2.5-1-21 defines a "rental" as "any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend." In relevant part [45 IAC 2.2-4-27](#) states:

- (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. . . .
- (b) Every person engaged in the business of the rental or leasing of tangible personal property . . . shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax **on the amount of the actual receipts from such rental** or leasing.
- (c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.
- (d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(Emphasis added).

Further, "[w]hen tangible personal property is rented or leased together with the service of an operator, the gross retail tax . . . is imposed on the property rentals. The tax is not imposed upon the charges for the operator's services, provided such charges are separately stated on the invoice rendered by the lessor to the lessee." *Id.*

Taxpayer's home staging agreement states that the "[a]greement . . . include[s] rental of all [s]taging [i]tems to the [c]ustomer." A customer may purchase a staging item for a price negotiated by the parties. The agreement also states that "[s]taging [i]tems are for display purposes only, and are not [to] be used in any way." Taxpayer is given "full and unfettered access to the premises" if its staging items and furnishings are on the customer's property. During the Hearing the Department was able to review an example of Taxpayer's invoice for home staging services performed during the year at issue. The invoice listed the staging services and rental of furnishings (and staging items) separately and the gross retail tax was applied to the rental of furnishings only.

Taxpayer has shown the Department that not only did it pay sales tax on the purchase of staging items, but it also collected sales tax on the rental of these items. Because the initial purchase of the staging items was exempt, and sales tax was remitted as a part of the eventual rental of the items, the Department agrees that the sales tax on the initial purchases should be refunded. Taxpayer is sustained.

FINDING

Taxpayer's protest is sustained.

May 14, 2021

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